Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans

A Publication of the Project

Disclosing hidden history:
Lustration in the Western Balkans

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[*] The author uses the constitutional name of the country, i.e. Republic of Macedonia or just Macedonia. In its work, the CDRSEE uses the name which is applied by international organisations, such as the UN or the EU, i.e. The former Yugoslav Republic of Macedonia.

Foreword

This publication has been undertaken within the project *Disclosing hidden history: Lustration in the Western Balkans*, a project led by the *Center for Democracy and Reconciliation in Southeast Europe* (CDRSEE) in Thessaloniki and organised in cooperation with five partner organisations: the *Albanian Human Rights Group* (AHRG) in Tirana, the *Center for Interdisciplinary Postgraduate Studies* (CIPS) at the University of Sarajevo, the *Croatian Helsinki Committee for Human Rights* (CHC) in Zagreb, the *Foundation Open Society Institute Macedonia* (FOSIM) in Skopje, and the *Center for Antiwar Action* (CAA) in Belgrade.

The objective of the Manual is to provide a concise overview on developments related to dealing with the authoritarian past in the Western Balkans, both on the level of the individual countries and on the regional level. Although its focus is on lustration legislation, procedures and practices, the Manual also considers the legislation on public access to the files of the secret services and its implementation as well as the issues of the general public debates on the past. It contains country overviews on Albania, Bosnia and Herzegovina, Croatia, The former Yugoslav Republic of Macedonia and Serbia and Montenegro, preceded by a regional overview based on the findings of the authors of the individual country overviews.

Given the aim of providing both concise and comparable information, a synopsis like approach was chosen. A questionnaire was prepared, serving as guidelines for the issues and questions to be dealt with in the overviews. It contained questions relating to the following matters:

1. Lustration law(s) passed;
2. Proposal(s) for a lustration law rejected;
3. Procedures assigned in the lustration law(s);
4. Implementation of lustration law(s);
5. Inclusion of NGOs in preparation of the law(s);
6. Public debates on the lustration law(s);
7. Laws and procedures on public access to files of the secret services;
8. Proposals for and implementation of other solutions (e.g. truth commissions, general amnesty, (de)certification processes, screening and re-appointments in state administration or the judiciary system, criminal proceedings, etc.);
9. General public debates on the past.

All overviews follow this structure. In the Country Overview Albania, an additional item on a pending draft law on lustration was included.

The country overviews were compiled by the project coordinators of the partner organisations named above, in the case of Albania by the project coordinator and Ms. Kathleen Imholz, a lawyer working in Albania and legal adviser to the partner organisation. They are based on the research of the authors and their extensive cooperation (consultations, discussions, interviews) with numerous experts on the different topics in the respective country. Many legislators, legal experts, academics, public administration officials, members of civil rights groups and other experts thus contributed in a significant way to the outcome. They are named in the country overviews. The regional overview is based mainly on the findings presented in the country overviews, but also on extensive discussions of the author with various experts on developments in the individual countries as well as in the entire region.

Our thanks go, first and foremost, to the authors of the country overviews. We also thank the experts who were available for consultations, discussions and interviews and who are named in the country overviews. Our gratitude also goes out to Corinna Noack-Aetopulos for organisational and technical help in the preparation of the publication and to Ruth Sutton for her thorough look, as a native speaker of English, at the final outcome. The design and technical creation of the publication were developed by *Beonet*, Belgrade. Particular thanks go to Dragoljub Dimitrijevic for his creative input. Last but not least we are grateful to the donors of the entire project, the European Union and USAID, for their generous support.

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The editor

Thessaloniki, February 2005

Regional Overview: Western Balkans

Compiled by Magarditsch Hatschikjan*

1. Lustration laws passed

In the Western Balkans, comprehensive lustration laws have been passed in one state (**Albania**) and in one member state of the State Union of **Serbia and Montenegro** (**Serbia**). In **Croatia**, in **Bosnia and Herzegovina** and in **The former Yugoslav Republic of Macedonia** as well as in **Montenegro**, no such lustration laws have been passed.

In **Albania**, a comprehensive lustration law, a lustration law affecting only one professional group (private lawyers) and a law containing one lustration-related provision have been passed. The first lustration law, passed on 26 January 1993 (Law Nr. 7666, "On the Creation of a Commission to Reassess Licenses for the Exercise of Advocacy and for an Amendment to Law Nr. 7541 dated 18.12.1991 'On Advocacy in the Republic of Albania'"), only affected the licensing of private lawyers; its essential articles were declared unconstitutional by the Constitutional Court in May 1993. The second lustration law, passed on 30 November 1995 (Law Nr. 8043, "On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State"), was a comprehensive one, amended four times between 1996 and 1998 and modified by the Constitutional Court in January 1996. It remained in effect until 31 December 2001, when it expired by its terms, except for one Article. The law containing one lustration related provision was Law Nr. 8001, passed on 22 September 1995 and entitled "On Genocide and Crimes Against Humanity Committed in Albania during the Communist Regime for Political, Ideological and Religious Reasons". The lustration related provision was a general statement, declaring that certain categories of persons could not be elected to certain offices until 31 December 2001. The law itself was not implemented, but a basis for implementing the lustration-related provision was provided by Law Nr. 8043. (An English translation of the texts of all laws and Constitutional Court decisions mentioned above is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).)

In **Serbia**, a lustration law was passed on 30 May 2003, entitled "Accountability for Human Rights Violations Act". (An English translation of the text is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/human_rights.pdf).)

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* Project Director, Center for Democracy and Reconciliation in Southeast Europe, Thesaloniki. This overview is based mainly on the findings of the authors of the individual country overviews published within this Manual, but also on extensive discussions of the author with various experts on developments in the individual countries as well as in the entire region. The author's thanks - for instructive discussions and contributions on general lustration issues, on the questionnaire that served as a guideline for this Manual and on various topics of this as well as of the other overviews - go particularly to the authors of the country overviews and to Ms. Kathleen Imholz (Lawyer and Legal Adviser, Tirana), Dr. Natalia Letki (Nuffield College, University of Oxford) and Mr. Jakob Finci (Association for Truth and Reconciliation, Sarajevo). All information given in this overview refers to developments until 31 December 2004.

The lustration law in **Albania,** that only affected private lawyers (later declared unconstitutional), remains a unique case in the Western Balkans, as a piece of legislation that singled out one professional group for lustration. While vetting processes affecting certain professional groups (police officers as well as judges and prosecutors) have taken place in **Bosnia and Herzegovina**, these processes were regulated by special procedures set up by international institutions (the UN Mission in the country and The Office of the High Representative).

The only two comprehensive lustration laws passed in the region (in **Albania** and in **Serbia**) show some formal and procedural similarities, but they differ essentially in terms of the most important provisions, the spirit and the implementation. In both cases, the laws were proposed and mainly supported by post-authoritarian parties and politicians. Both laws contain similar lists of offices and functions that persons affected by the law are not allowed to hold, be elected or appointed to. The space of time during which the affected persons are prohibited from holding the offices and functions listed is also similar: in **Serbia**, it is explicitly determined for five years and in **Albania**, it is implicitly determined (by looking at the expiry date of the law) for six years.

More important, however, are the substantial differences. In the case of **Albania**, the main criterion used in the definition of the persons affected is the prior holding of a state or party position (high-ranking officials of the Party of Labour, i.e. the Communist Party, leading functionaries in the organs of the former State Security or collaborators of them; the law allowed, however, for the exemption of persons who would be otherwise covered if they had "acted against the official line or distanced themselves publicly"). In the case of **Serbia,** the main criterion is the commission of human rights violations. The period lustration is applied to, in the case of **Albania**, is the socialist era (defined in the original enactment as the time between 29 November 1944 and 31 March 1991 and in the 1997 amendment as the time between 29 November 1944 and 11 December 1990), and in the case of **Serbia,** the time since 23 March 1976 (the day the International Covenant on Civil and Political Rights in Yugoslavia came into effect). There has also been a fundamental difference with respect to implementation, which is discussed below (see item 4.).

2. Draft laws on lustration rejected or pending

A draft law on lustration was rejected in **Croatia**, while in **Albania** a draft law is currently in parliamentary procedure. In **Bosnia and Herzegovina** as well as in **The former Yugoslav Republic of Macedonia**, no proposals for a lustration law have ever been filed with the respective parliament.

The ultimately rejected draft law in **Croatia** was proposed by the Croatian Party of Rights which twice initiated a parliamentary procedure (on 11 February 1998 and on 20 October 1999). Both times, the topic was removed from the agenda of the parliament by a vast majority of the deputies, the rejection being led by the then (and currently again) ruling Croatian Democratic Union. As the title of the proposal (Draft Law on Removing the Consequences of the Totalitarian Communist Regime) indicated, its character was nearer to a broader de-communisation than to a pure lustration approach. It aimed mainly at a systematic disabling of a rather broad range of "privileged members" of the former regime from holding high-ranking offices in the new state.

In **Albania**, a draft law entitled "On checking the figure of an elected or appointed official in

important state organs" and proposed by three deputies from two of the small opposition parties was filed with the parliament on 29 June 2004. (An English translation of this draft law is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).) It would provide that persons belonging to one of the 10 listed categories (see Country Overview Albania, item 7, for the list) would be checked as to whether they had been collaborators with the Communist secret police. Appointed persons (not elected ones) would be discharged from their positions if they turned out to have been collaborators and didn't resign voluntarily. Although not directed to opening Communist era secret police files to the public *per se*, the draft law was another major attempt to bring back a consciousness of the relations that current politicians, civil servants, army and police officials, judges and prosecutors and other public officials had with the secret police of the former regime. The draft law has been discussed in two of the parliamentary commissions but has not been voted on. It is unlikely to be approved, or even voted on, before the elections scheduled to be held in July 2005.

3. Procedures assigned in the lustration laws

As already mentioned, the two comprehensive lustration laws in the region (Law Nr. 8043 dated 30 November 1995 in **Albania** and Accountability for Human Rights Violations Act dated 30 May 2003 in **Serbia**) show some similarities with respect to the procedures assigned. Both laws contain a list of offices whose holders are to be affected by the implementation of the laws. The categories do not differ substantially, the focus being on high-ranking offices of state and in state administration on different levels, state security, various public institutions, national and state owned banks, diplomatic representations and judiciary system. The main difference is related to the ranks included. Generally, the law in **Albania** foresees the lustration of a broader range of persons than the law in **Serbia**. For example, it includes the entire personnel in the State Information Service (after 1998, called the National Information Service), the Military Information Service and the Public Order Information Service, the entire personnel in Albanian diplomatic representations and all judges, assistant judges, prosecutors and officers in the judicial police. The respective categories in **Serbia** include only officials and sworn officers of the Security Information Service and other similar services, the heads of diplomatic missions and the consuls and certain categories of judges and prosecutors. The only exception to this rule is the inclusion of all deputies of the National and Provincial Assemblies in **Serbia**, while the law in **Albania** does not foresee the lustration of parliamentarians. (For the complete lists, see Country Overview: Albania, item 2, and Country Overview: Serbia and Montenegro, item 3.) In both cases, the laws determine that a special commission for investigation is to be set up. The same was done in the first lustration law in **Albania** (Law Nr. 7666, later declared unconstitutional). A particular feature of the procedures assigned was the specifications in the law in **Serbia** on vetting procedures prior to appointment and those after appointment.

The main substantial difference, that also refers to the procedures assigned, has already been mentioned: The main criterion used in the definition of the persons affected, in the case of **Albania**, is a former position, in the case of **Serbia,** the commission of human rights violations. In congruence with this difference, the procedural rights of the persons affected by the laws are by far more exhaustively described in the latter case. This also applies to the appellate procedures. In **Serbia**, a complaint against the decision made by the Commission Panel may be submitted to the Commission, and an appeal against the decision of the Commission on the complaint may be lodged at the Supreme Court. In **Albania**, the comprehensive lustration law originally provided for a direct appeal to Albania's highest

ordinary court (then known as the Court of Cassation). It was amended by Law Nr. 8232 dated 19 August 1997 to provide a direct appeal to the Court of Appeals. As for the first lustration law, later declared unconstitutional by the Constitutional Court, the High Council of Justice, newly created in 1992, was assigned as the body to hear appeals. This provision was specifically criticised in the Constitutional Court Decision referred to above, for giving an improper competency to the High Council of Justice.

The precise overall number of persons and offices covered by the lustration laws is unknown, in **Albania** as well as in **Serbia**.

4. Implementation

In the entire region, a single lustration law was implemented for the positions covered by it - the comprehensive Law Nr. 8043 in **Albania** (from early 1996 until it expired by its terms at the end of 2001). However, some deficiencies were evident, particularly in connection with the vague formula allowing for exemptions (if persons who would be otherwise covered had "acted against the official line or distanced themselves publicly") which at least offered the possibility of politically motivated manipulation. The total number of persons who lost their jobs or were not permitted to run for office or assume official positions because of this law is not known. According to some serious estimates, it may have been about 250.

The first lustration law in **Albania** (Law Nr. 7666 that only affected private lawyers) was only partially implemented, before being declared unconstitutional. The licenses of 47 persons to practice law were ordered to be revoked, but after the law was declared unconstitutional, these persons did not loose their licenses.

In **Serbia**, practically nothing of the lustration law has been implemented. There was only one measure partially implemented: the National Assembly appointed 8 out of 9 members of the Commission for Investigation of Accountability for Human Rights Violations. The ninth member has not yet been appointed, and the Commission has not even started to work. According to the assessment of serious observers, there is no political will to implement the law.

5. Inclusion of NGOs and victims of former regimes in the preparation of lustration laws

NGOs have not been included in the preparation of the lustration laws, neither in **Albania** nor in **Serbia**. The same is true for the rejected draft law in **Croatia**.

Some victims of the former regime may have been involved in the preparation of the comprehensive lustration law in **Albania**, but this was not a major factor. In **Serbia**, victims or their organisations were not included in the preparation procedure.

A possible explanation in the case of **Albania** may be the fact that the lustration laws were enacted in an early phase of the transition, and in an expedited manner. The NGO sector was only beginning to develop, although several human rights groups did hold seminars on such general questions as opening the files or restitution/rehabilitation of former political prisoners. In the case of **Serbia**, the law was adopted in an emergency procedure, and the National Assembly very rarely, if at all, involves NGOs in law preparation.

6. Public debates on lustration legislation

Major public debates on lustration legislation have not taken place in any country of the region.

In some cases, smaller public debates on lustration and lustration-related issues have arisen. In **The former Yugoslav Republic of Macedonia**, for example, a debate touched upon the issue of rehabilitation of dissidents when this was a possible subject of legal regulation, but no substantial result was achieved. NGOs also supported several debates on former dissidents in the country, looking at their legal status and restitution legislation, among other issues. In **Serbia and Montenegro**, some NGOs, several legal and other experts and some media representatives initiated discussions on lustration and related topics at round tables and seminars. There were some, albeit not many, reports in the media on such discussions.

7. Laws and procedures on public access to files of the secret services of the former regimes

The legislation on this issue as well as the implementation of respective laws show a broad variety of approaches. It is remarkable that public access to the files is generally excluded solely in those cases where lustration laws have been passed (**Albania** and **Serbia**), while in those countries, where no lustration laws have been passed (**Bosnia and Herzegovina**, **Croatia**, **The former Yugoslav Republic of Macedonia**), various regulations allow(ed) for at least a certain kind of public access to the files. Obviously, there is no automatic correlation between the approaches in lustration legislation and those related to the opening of the files.

The files of the secret services in **Albania** have never been available to the public. The comprehensive lustration law described above made the files available to the seven-member state commission that it set up. Article 16 of this law, the only article remaining in effect after 31 December 2001, instructs that the files are now closed until the year 2025. Some NGOs were active on the issue of the files in connection with the pending draft law on lustration, and various intensive debates on opening the files took place in 2004.

In **Serbia**, a Decree on removing the confidence mark from files of the secret service was adopted on 31 May 2002, but was declared unconstitutional in October 2003. A Decree under the same title was adopted in **Montenegro** in September 2002, which was not declared unconstitutional as had been the case in **Serbia**. Models of a law on Opening Secret Police Files were drawn up by two NGOs and presented to the public, but governmental bodies and particularly the Ministry of Police rejected any discussion on those proposals.

In **Bosnia and Herzegovina**, there is no separate legal act on public access to the files of the secret services. The issue has been regulated within a broader legal act, the *Freedom Of Access To Information Act*. Substantially identical laws under this title were passed on state level in 2000 and on the level of the entities (Federation and Republika Srpska) in 2001. The main provisions, as a rule, enable any citizen to have access to information, including information that has been classified as “confidential”, to the greatest possible extent, if it is in accordance with the public interest. Non-disclosure is declared as the exception, stipulations of exemptions being defined in various articles of the law. Personal files should, as a rule, be accessible only to the respective persons. However, the implementation of the law revealed, and still exhibits, several deficiencies. The public authorities were mainly criticised for insufficient or even non-existent preparatory work regarding the implementation, a lack of

knowledge of the legislation and no or incorrect knowledge of other laws. Two general dilemmas were also addressed: the procedure of lodging complaints and the vagueness of the formula “in accordance with the public interest”, since it could be used for arbitrary rejections of requests of citizens to gain access to their files.

In **Croatia**, no particular law on the issue of public access to the files of the secret services was adopted (and none has been proposed). A general Law on the Security Services was passed in March 2002 and has been applied since April 2002. The law makes no distinction between the period from 1945 until 1990 and the period after 1990. Principally, the law allows for access to the documents and material. Security services are obliged to inform the citizens, at each individual request, whether any procedure such as collecting data and information on that particular individual has been undertaken, and whether his/her personal data has been recorded and updated by the secret services. The security services are not obliged to do so if the information could lead to endangerment of the security of other persons, or if the information could lead to harmful consequences for national security and the interests of the state. In 2001, the Minister of the Interior submitted 38,000 files (from the period 1946-1990) from the Croatian State Archives of the former Socialist Republic of Croatia and around 650 files from the Service for the Protection of the Constitutional Order (from the period 1990-2000), and the respective citizens gained free access to their files.

In **The former Yugoslav Republic of Macedonia**, a law on the access to the files of the secret service was enacted in 2000 (“Law on handling personal files kept by the State Security Service”), proposed by the then Minister of Interior Affairs. By the enactment of this law, a total of 15,000 files became accessible to the persons who had been observed and prosecuted by the state security services. The law determined the period from 1945 till the day it entered into force (July 2000) as the time of application. A deadline was set, giving the possibility of raising requests for access within one year after the law had come into force; this meant that a request could be raised until mid-July 2001. The procedure proved to be highly bureaucratic and ensured a strong protection for officials of the Ministry of Interior Affairs. The law was implemented from July 2000 till July 2001. The Ministry of Interior Affairs never disclosed the precise number of accessed files to the public. In addition, the report that the Ministry had prepared for the Parliament was also never made public. Bearing in mind that the law was implemented in the period when the country was in its biggest security crisis since gaining independence, it could be expected that public interest in this issue would have been rather low at the time. The law only attracted some media interest in the first three months of its application, which was often connected to the local elections that took place in September 2000. In this context, some initiatives were started with the aim of identifying certain candidates for political posts as collaborators or informants of the secret service.

8. Proposals on and implementation of other solutions

Screening and Appointment Processes

On the initiative of international institutions, rather comprehensive efforts with respect to the police and the judiciary have taken place in **Bosnia and Herzegovina**. UNMBIH (the UN Mission in the country) vetted approximately 24,000 police officers in a (de)certification process between 1999 and 2002. The result was that approximately two thirds of the persons vetted were provisionally certified to exercise police power, and over 90 percent of them were later granted full certification. The Office of the High Representative created three High Judicial and Prosecutorial Councils in 2002, which screened the appointment of

approximately 1,000 judges and prosecutors between 2002 and 2004. Since this process is still ongoing, it is too early to assess its overall impact. In both cases, some criticisms about various aspects of the procedures and the results were voiced. With respect to the (de)certification process of police officers, the fairness of the procedures were questioned, mainly the vague and non-legislated criteria applied by UNMIBH. The most significant concern with respect to the process of screening and re-appointing judges and prosecutors is that the goal of restoring the multi-ethnic character of the judicial and prosecutorial services appears not to have been fully achieved, particularly in the Republika Srpska.

A rather unusual and highly questionable sort of vetting and appointment process with respect to the judiciary took place in **Croatia**. The constitution provided that a body named the "State Judicial Council" had to appoint, discipline and remove the judges. But until 1994, this Council had not been established, and there were no precise rules on its composition. As long as the Council had not been established, judges continued to be appointed and removed from office by the parliament. During the first half of the 1990s, the mandate of a significant part of the judges expired. Some of the judges simply continued to perform their functions, some received formal decrees on the expiry of their mandate and the consequent cessation of their office, and some were simply notified that they had to leave office due to the "new situation". According to provisional results of as yet unfinished research, there were more than 2,200 dismissals and appointments of judges and state attorneys recorded in the Official Gazette in the period 1990-1996, and this number is lower than the real one, since in some periods dismissals were obviously not reported in the Official Gazette. From the recorded dismissals, there were 361 cases in which judges were removed without any explanation.

Truth Commissions

The establishing of Truth Commissions was discussed and proposed in several countries of the region, but only in one case was such a Commission set up, and even in this case, its existence remained on paper only. In the **Federal Republic of Yugoslavia** (which later became the state union of **Serbia and Montenegro**), then President Vojislav Kostunica established a Truth and Reconciliation Commission in March 2001, but some of the most distinguished of the designated members had serious objections with respect to the objectives, competences, and powers of this commission and refused to participate. Two and a half years later, the commission just vanished, without having undertaken any substantial activities and without having achieved any tangible results.

Serious efforts to establish a Truth and Reconciliation Commission were undertaken in **Bosnia and Herzegovina**, mainly by the Citizens' Association for Truth and Reconciliation. A draft law was prepared, but never adopted. The main argument in favour of the proposal was based on the assessment that the disclosure of the truth on the war is a precondition for reconciliation. The main argument against the proposal was that the eventual functioning of such a commission could possibly overlap and undermine the work of the International Criminal Tribunal for the former Yugoslavia (ICTY). Another argument was that such a commission could only work effectively if it were a regional one for all former Yugoslav Republics.

In **Albania**, there have been limited discussions, but no formal proposals about a truth commission.

Criminal proceedings, dealing with "crimes against humanity", amnesty laws

In **Albania**, there has been no general amnesty for people connected to the Communist regime. Several dozen criminal proceedings took place in the 1990s resulting in convictions and the imprisonment of many people who had held important positions in the Party of Labour (including Ramiz Alia, the last Communist Party head and first president of post-Communist Albania).

In **Serbia and Montenegro**, NGOs in particular asked for criminal proceedings for war crimes and crimes against humanity, but there has only been one court case (Ovcara - dealt with in a Special Court for war crimes) which started in 2004. The main reason is obviously that the issue of war crimes is still a "taboo".

Although not related to the socialist period or the developments in the 1990s, it is important within this context to mention the only amnesty law adopted in the region, which was passed in **The former Yugoslav Republic of Macedonia** in March 2002. The law was the first legal outcome of the Ohrid Framework Agreement (13 August 2001) which led to the end of the military conflict in the country in 2001. This law created an amnesty for further investigative and legal procedures and cancelled the jail sentences for all persons (citizens of the state, persons legally residing as well as persons having family or property in the country) who were found to have prepared or conducted criminal activities connected with the conflict in 2001 prior to 26 September 2001. A total number of 270 persons who had been imprisoned and waiting for the legal proceedings were free after the law entered into force. The law applied to those persons who had handed over their weapons up to 26 September 2001 which was the last day of the weapons harvest operation.

9. General public debates on the past

There has been no comprehensive general debate on the past in any of the countries of the region. However, in every country, a few public debates on various aspects of the past have taken place, although all of them have remained rather isolated debates, touching upon partial features. The focus and the periods referred to in those debates varied considerably, depending on the specific historical experiences of each country. In **Albania**, it can generally be stated that they concentrated on the socialist period, while in all **former Yugoslav Republics**, the interest was mainly directed at the developments in the 1990s. In some cases, particularly in **Albania**, **Bosnia and Herzegovina** and **The former Yugoslav Republic of Macedonia**, political actors, sometimes supported by sections of the media, tried to initiate or use debates on the past for their own party or political reasons. On the other hand, the low level of interest or even attempts to prevent such debates was due to the fact that many political actors and high-ranking officials had been part of the former regimes.

Major periods referred to in the public debates

In **Albania**, debates on the past clearly concentrated on developments during the socialist period, generally considered to have extended from 1945 either to 1990, 1991 or 1992. In **Bosnia and Herzegovina**, there were some debates on the socialist past during the short pre-war period (1991-1992). After the war (1992-1995), the general public was mainly concerned with the disclosure of war related facts. In **Croatia**, the socialist period and the developments in the 1990s provoked rather few debates. Most of the public discussions concentrated on developments and crimes committed during the Second World War. In **The former Yugoslav Republic of Macedonia**, the confrontation with the consequences of the past authoritarian regimes was generally considered to be of minor importance, mainly because the post-1945

period is assessed as a period of formation and fostering of the state and therefore perceived rather positively. In **Serbia and Montenegro**, the focus was clearly on the period of the Milosevic regime and particularly the 1990s.

Main topics of these debates

In **Albania**: Human rights violations, political trials and other abuses during the socialist period. Some debates arose on the issue on public access to the files of the Communist secret service.

In **Bosnia and Herzegovina**: The war (1992-1995) and war crimes.

In **Croatia**: The relations between Ustashas and Partisans as well as the crimes committed by the Partisans during the Second World War.

In **The former Yugoslav Republic of Macedonia**: The relations between the Republic and the centre during the Yugoslav period, efforts of the representatives of the Albanian community to achieve greater autonomy for the Albanians and actions against liberal dissidents during the socialist period.

In **Serbia and Montenegro**: The relations between Serbia on the one side and Croatia and Bosnia and Herzegovina on the other, the role of the Milosevic regime and particularly the role of the army and the police in the wars in Croatia and in Bosnia and Herzegovina, the issue of cooperation with the Hague Tribunal.

Main initiators of debates and segments of societies directly or indirectly involved

In most cases, NGOs initiated debates on the past. Governmental initiatives (such as in some cases in **Albania**) were the exception. NGOs, sections of the media, academics, experts, students and writers were the main parties involved.

Public interest in these debates and its effect on the public opinion

It is difficult to quantify, but all reports indicate that the interest was generally rather small and the effect even smaller.

Country Overview: Albania

Compiled by Elsa Ballauri and Kathleen Imholz[1]

1. Lustration laws passed

Two lustration laws have been passed in the Republic of Albania. The first, which only affected the licensing of private lawyers, was passed in early 1993 and was declared unconstitutional by the Constitutional Court of Albania later that year. It is referred to as "Law Nr. 1" herein.

The second, passed in the fall of 1995, was a much broader law. It was amended several times and also modified by a Constitutional Court decision; as amended and modified, it remained in effect until 31 December 2001, when it expired by its terms (except for one article, as indicated below). It is referred to as "Law Nr. 2" herein.

It should be noted that a third law was passed slightly before Law Nr. 2 that contained a lustration-related provision. This was Law Nr. 8001 dated 22 September1995, entitled "On Genocide and Crimes Against Humanity Committed in Albania during the Communist Regime for Political, Ideological and Religious Reasons" ("Për genocidin dhe krimet kundër njerëzimit kryer në Shqipëri gjatë sundimit komunist për motive politike, ideologjike dhe fetare"). This law charged the prosecutors' office with investigating such crimes pursuant to the then current Criminal Procedure Code and made a general statement that certain categories of persons could not be elected to certain offices until 31 December 2001. It then charged the Council of Ministers with "preparing legal acts and approving sub-legal acts" by 15 December 1995. Law Nr. 2 dated 11 November 1995 then followed, laying the basis for implementing the general provision of Law Nr. 8001. Since Law Nr. 8001 was not itself implemented, it is not dealt with further here, but for historical completeness, an English translation of it is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

Law Nr. 1

Official number and name: Nr. 7666, "Për krijimin e komisionit për rivlerësimin e lejeve për ushtrimin e avokatisë dhe për një ndryshim në ligjin nr. 7541, datë 18.12.1991 'Për avokatinë në Republikën e Shqipërisë.'" ("On the creation of a commission to reassess licenses for the exercise of advocacy and for an amendment to law Nr. 7541 dated 18.12.1991 'On advocacy in the Republic of Albania.'")

Date of passage: 26 January 1993.

Official publication in: Official Journal of the Republic of Albania, Nr. 1/1993.

[1] Ms. Ballauri is the founder and Executive Director of the Albanian Human Rights Group (AHRG) in Tirana. Ms. Imholz is legal adviser to the AHRG. Thanks also to other personnel of the AHRG for their contributions to this overview. All information in the overview refers to developments up to 31 December 2004.

An English translation of the law is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

Procedure and margin of majority in Parliament: This law was introduced and passed under the normal parliamentary procedures of the time. The margin of majority cannot be determined, since the records of the Albanian Parliament from 1991-1996 are in the process of being transcribed from tapes. The archive of the law contains only the information that it was passed, duly sent to the President for promulgation and then sent on for publication (and that it was later repealed by the Constitutional Court). Votes were not recorded electronically at this time, but when the tapes have been transcribed and a book of the laws and other acts passed by the Albanian Parliament in 1993 has been prepared, the exact vote may be indicated. Since this was early in the Albanian transition and under the first government of the Democratic Party (DP), the margin of approval was probably roughly similar to the percentage of seats held by the DP and its allies, or approximately 70 percent.

Proposed by: A group of deputies. In the archives of the Parliament, they are not named specifically, but were doubtless DP deputies. Under the Albanian Constitution of that time (and now), submission by at least one deputy is sufficient to properly put a law before the Parliament.

Accepted by: Cannot be determined, as indicated above. The DP was in a coalition with the Social Democratic Party and the Republican Party at the time, and since this was a DP bill, all their deputies doubtless supported it.

Rejected by: Cannot be determined, as indicated above. However, since the Constitutional Court complaint was brought by the Socialist Party (SP) parliamentary group, doubtless their deputies voted against it. In addition, the DP had started to lose some of those elected in its overwhelming 1992 victory, and by January 1993 they had formed another party, known as the Democratic Alliance (DAP). The three or four members of Parliament who were members of the DAP at the time may also have voted against this law.

Main provisions: Article 1 (setting up commission to re-evaluate existing licenses) and Article 3 (amending advocacy law to list categories of persons not entitled to be licensed).

Amendments: None.

Time of Application: According to Article 5, the time of prohibition of exercising the profession of advocacy for the persons affected by the law was to be five years (presumably, starting from the date the license was taken away or refused in the first place; since, as discussed below, the law was repealed by the Constitutional Court, the actual time was never determined).

Subsequent History: On 20 April 1993, a meeting of the commission set up by this law issued a summary decision revoking the licenses of 47 lawyers. A complaint against the law was brought to the Constitutional Court by the Parliamentary Group of the SP (the largest minority party in the Parliament at that time, and successor to the Albanian Party of Labour). On 21 May 1993, in decision Nr. 8/1993, the Court struck down Articles 1, 3 and 4 of the law, these being essentially the entirety of the law. It was never revised or re-introduced in Parliament.

An English translation of Constitutional Court decision Nr. 8/1993 is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

Law Nr. 2

Official number and name: Nr. 8043 dated 30 November 1995, "Për Kontrollin e Figurës së Zyrtarëve dhe Personave të Tjerë që Lidhen me Mbrojtjen e Shtetit Demokratik." ("On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State.")

Date of passage: 30 November 1995.

Official publication in: Official Journal of the Republic of Albania, Nr. 26/1995.

An English translation of the law (with all amendments and modifications and some explanation by the translator) is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

Procedure and margin of majority in Parliament: Like Law Nr. 1, this law was introduced and passed under the normal parliamentary procedures of the time, but the margin of majority cannot be determined, for the reasons set out above. By the fall of 1995, the still-ruling DP (whose Council of Ministers had proposed the bill) had lost many more of its deputies, including most of those from the Social Democratic Party (SDP). Therefore, the margin of the majority was doubtless less than for Law Nr. 1 in 1993.

Proposed by: The Council of Ministers of the Republic of Albania.

Accepted by: The DP and its remaining allies (see above).

Rejected by: Although we do not have an exact tally, it can be stated with some confidence that all or most of the deputies of the SP, SDP and PAD voted against this law.

Main provisions: Article 1 (persons covered by the law); Article 2 (listing prohibited functions); Article 4 (establishment of seven-member state commission to implement the law).

Amendments: Constitutional Court decision Nr. 1/1996 dated 31 January 1996 modified the law (while approving it in general), for example, removing journalists from its coverage. The law was amended legislatively four times before it went out of effect by its terms (see subsequent history, below): Law Nr. 8151 dated 12 September 1996; Law Nr. 8220 dated 13 May 1997; Law Nr. 8232 dated 19 August 1997; and Law Nr. 8280 dated 15 January 1998.

Time of Application: Article 18 of the law provided that (except for Articles 14 and 16, or after a later amendment, except only for Article 16) it would expire on 31 December 2001, which it did. The persons "lustrated" (barred from serving in the listed government positions) had to have been in one of the listed categories between 29 November 1944 and 31 March 1991 (as Law Nr. 2 was originally enacted) or between 29 November 1944 and 11 December 1990 (after its 1997 amendment).

Subsequent History: Law Nr. 2 was upheld in the face of a challenge to the Constitutional Court in January 1996 (although it was modified in several respects; see below for the most important ones). It was used before the parliamentary elections of May 1996 to disqualify a number of opposition candidates. Thereafter, it was chipped away at, first to remove deputies and mayors from its coverage (because of Council of Europe objections to the application of its principles to elected officials) and in other respects mentioned below, or in the translation of the law. Although Nafiz Bezhani, who was chairman of the seven-member commission between 1997 and 2001 (under the Socialist Party government), undertook a campaign to extend the life of the commission and expand the coverage of the law to include not only the moral figure of the persons affected but their current economic interests, the law was permitted to expire at the end of 2001, leaving in effect only Article 16, which provides that the files are now closed until 2025.

An English translation of Constitutional Court decision Nr. 1/1996 is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

2. Procedures assigned in the lustration laws

Law Nr. 1

Main provisions on procedures: Article 1 (setting up the special commission to re-evaluate existing licenses, but without other procedures); Article 2 (amending the existing advocacy law to require that lawyers meet "moral" criteria, but without defining them); Article 4 (right to appeal to the High Council of Justice); and Article 5 (limiting the time of prohibition of practice as a lawyer to five years; see above).

Additional decrees on procedures: None.

Persons to be affected by implementation of the law: Potentially, the law applied to all persons licensed or to be licensed by the State as lawyers. As indicated above, initially, the licenses of 47 lawyers were taken away by the special commission under the Minister of Justice, but the licenses were returned after the Constitutional Court gutted the law. The provisions of the law amending the advocacy law (so as to prohibit new licenses from being issued to people in the prohibited categories) were never put into effect. The categories that would have disqualified people from being allowed to work as advocates were:
a) former officers of Albanian State Security and collaborators with it;
b) former members of the Committees of the Party of Labour of Albania (Communist Party) and their apparatus at the central, regional and district levels; former directors of state organs at the central, regional and district levels (ministers, deputy ministers, directors of a directorate and chairmen, deputy chairman and secretaries of executive committees in districts and regions);
c) former employees of prisons and camps where punishment was carried out;
d) those who finished the Faculty of Law on the basis of education of the high school of the party and former chairmen of the offices of cadre of all levels;
e) those who had taken part as investigator, prosecutor or judge in special or staged political proceedings as well as those who performed high management functions in the central organs of justice;

f) those who used physical or psychological force during investigations, or other actions, as well as those who took part in border killings.

Additional institutions, agencies, parliamentary bodies assigned: The special commission under the Minister of Justice set up pursuant to Article 1 of this law was one such additional institution. The criteria for members of this commission, or even the number, were not indicated. The High Council of Justice, newly created in 1992, was assigned as the body to hear appeals. (The latter provision was specifically criticised in the Constitutional Court decision referred to above, for giving an improper competency to the High Council of Justice).

Law Nr. 2

Main provisions on procedures: Article 1 (persons covered by the law); Article 2 (listing prohibited functions); Article 3 (exemption from coverage in the case of "interests of state"); Article 4 (establishment of seven-member state commission to implement the law); Article 5 (procedures of the commission and review of decisions); Article 6 (additional procedures); Article 7 (how a proceeding is initiated); Article 8 (how a clearance certificate is issued); Article 9 (consequences for persons checked); Article 10 (appeal right); Article 11 (prohibition of publicity); Article 12 (applicability to political party heads); Article 13 (information sources for the commission); Article 15 (criminal penalties for misuse of data).

Additional Decrees on Procedures: None (although Article 17 of the law specifically called for the Council of Ministers to draw up additional procedural regulations).

Persons to be affected by implementation of the law:
1. the President of the Republic, persons elected by the Parliament and those appointed by the President;
2. members of the Government, secretaries of state, their deputies, the general directors and directors of directorates of state offices, and those at the same level in other state structures;
3. those who work in the Presidency, in the parliamentary administration and the administration of the Council of Ministers, the ministries and other central institutions, the Constitutional Court and the Court of Cassation (called the High Court since 1998); High State Control; the General Prosecutor's Office; and ranks lower than those mentioned in point 2. if it is judged to be in the interest of the protection of the state by the head of the office;
4. the governor, vice governors and directors of the Bank of Albania;
5. officers in the Armed Forces in high grades (general and colonel) and commanders of independent units;
6. prefects;
7. personnel in the State Information Service (after 1998, called the National Information Service), the Military Information Service and the Public Order Information Service;
8. personnel in the Republican Guard;
9. chiefs of commissariats, police chiefs, employees of the criminal police and other special branches;
10. judges, assistant judges, prosecutors and officers in the judicial police;
11. personnel in Albanian diplomatic representations;
12. persons who are directors and editors in state radio and television and the state news agency;
13. persons who have management functions in economic unions, state financial institutions, insurance institutions and state banks;

14. rectors and directors in universities and schools of higher education.

As enacted, the law first covered journalists and employees in high-level positions in large circulation newspapers, but this was repealed by the Constitutional Court decision referred to above.

In addition, the law originally also covered deputies in Parliament, but that prohibition was removed by Law Nr. 8232 dated 19 August 1997; and in addition to prefects, it originally also covered a number of other local government officials, but with the amendments made by Law Nr. 8232 as well as Law Nr. 8151 dated 12 September 1996, prefects remained as the only local government officials to whom the law applied.

The categories that disqualified persons from working in the 14 categories listed above changed a number of times, and it is convenient to break them into three separate lists, as follows:

A. As Law Nr. 2 was originally enacted (covering the period 29 November 1944 until 31 March 1991, the date of the first pluralist elections), including modifications made by the Constitutional Court decision of January 1996 and Law Nr. 8151 of September 1996:
1. member or candidate of the Politburo [Political Bureau], secretary, member of the Central Committee of the Party of Labour of Albania, First Secretary of the party in the districts and analogous levels, or employee of the sector for State Security in the Central Committee of the party; except for cases in which the person worked against the official line or distanced himself publicly;
2. member of the government, member of the Presidential Council, chairman of the High Court, General Prosecutor, deputy before the elections of 31 March 1991; except for cases in which the person worked against the official line or distanced himself publicly;
3. officer of the State Security (legal or illegal), in the departments of prosecution and those of protecting high state personalities;
4. registered collaborator in the materials of the State Security (informer, agent, resident or person giving shelter) or conscious collaborator with the State Security or owner of an apartment put at the disposition of the State Security;
5. person who gave a denunciation or false witness or supplied aggravating circumstances in political trials to the damage of the defendants;
6. person who worked as an officer in the structure of the camps and prisons for political prisoners;
7. person who finished the Higher School of the Ministry of the Interior and its previous analogues in the profile of the State Security or courses of three months or longer in the same profile, as well as their analogues outside the state;
8. person who took part as investigator, prosecutor, judge or assistant judge in special political trials;
9. person who was or is a collaborator of any foreign investigative service or their analogues;

The Constitutional Court decision of January 1996 said in its discussion, but did not expressly hold, that the phrase “except for cases in which the person worked against the official line or distanced himself publicly” appearing in categories 1. and 2. should be extended to all categories except 9.

B. The above list of categories was significantly revised by Law Nr. 8220 dated 13 May 1997 (i.e., this was the list in effect for the June 1997 parliamentary elections). No dates of coverage were specified:

1. member or candidate of the Political Bureau, except if the person worked against the official line or distanced himself from duty publicly;
2. officer in the State Security (legal or illegal) in departments of prosecution and those of protecting high state personalities;
3. person registered in the materials of the State Security as a collaborator (informer, agent, resident or person who gave shelter) or conscious collaborator with the State Security or owner of an apartment put at the disposition of the State Security;
4. person who gave a denunciation or false witness or supplied aggravating circumstances in political trials to the damage of the defendants;
5. person who finished the Higher School of the Ministry of the Interior and its previous analogues in the profile of the State Security or courses of three months or longer in the same profile, as well as their analogues outside the state;
6. person who was a collaborator of any foreign investigative service or their analogues;
7. person who was punished by court decision for crimes against humanity.

C. Finally, after the 1997 elections (won decisively by the SP), the categories were changed again by Law Nr. 8280 dated 15 January 1998, which also changed the period of coverage to the period 29 November 1944 – 11 December 1990 (the date of creation of the DP):
1. member or candidate of the Political Bureau of the Party of Labour, except for cases in which the person worked against the official line or distanced himself from duty publicly;
2. senior officer or leading functionary in the organs of the State Security, chairman of a branch, director or deputy minister or minister of the organs of Internal Affairs;
3. collaborator of the organs of the State Security with activity of a political nature in connection with the criminal acts contemplated by a 1991 law declaring innocence or amnesty for persons who were politically persecuted and punished under the Communist regime, or a voluntary collaborator for such actions, or a person in foreign intelligence services or other analogous organs;
4. person punished by a final criminal decision for crimes against humanity, defamation or false testimony in political cases; or a person who was a member of the Central Commission of Banishment (the commission that decided on internments).

This was the list of disqualifying categories implemented until the law expired at the end of 2001.

Additional institutions, agencies, parliamentary bodies assigned: The law created a seven-member commission, consisting of the chairman, deputy chairman and five members, who were to be honourable citizens in good standing and not Members of Parliament. The Parliament had the right to name and remove the chairman, while the deputy chairman and one member were to be named and removed by the Council of Ministers, and one member each by the Ministry of Justice, the Ministry of the Interior [Public Order], the Ministry of Defence and the National [State] Information Service.

The law originally provided for a direct appeal to Albania’s highest ordinary court (then known as the Court of Cassation). It was amended by Law Nr. 8232 dated 19 August 1997 to provide a direct appeal to the Court of Appeals.

3. Implementation

Law Nr. 1

Measures fully implemented: None.

Measures partially implemented: As indicated, the licenses of 47 persons to practice law were ordered to be removed by the special commission set up under Article 1 of the law, but after it was declared unconstitutional, these persons did not lose their licenses. There was no further action taken against existing or future lawyers.

Deficiencies of implementation: The repeal of the major articles of the law by the Constitutional Court within a few months of its enactment made implementation moot.

Offices affected by implementation: None.

Persons affected by implementation: None (except that, as indicated above, the status of the licenses of 47 licensed lawyers was in question for several months).

Law Nr. 2

Measures fully implemented: From early 1996 until the law expired by its terms at the end of 2001, the law was implemented for the positions covered by it at any given time.

Measures partially implemented: None.

Deficiencies of implementation: As can be see by its terms, the law had features that made it subject to political manipulation. For example, the exemption of people who would be otherwise covered because they "acted against the official line or distanced themselves publicly" (originally in several subparagraphs of Article 2, but extended to all of Article 2 by the Constitutional Court decision referred to above) was vague enough to permit favoured persons to be excluded at will.

Offices affected by implementation: The full list is given above, in three separate sections as it changed significantly during the time the law was in effect.

Persons affected by implementation: The total number of persons who lost their jobs or were not permitted to run for office or assume official positions because of this law is not known. A Member of Parliament has estimated that around 100 candidates were barred from running in the 1996 parliamentary elections because of it. The law had been amended by the time of the 1997 parliamentary elections and the number of candidates barred from those elections was much smaller. After the law had been amended, so that it no longer covered elected officials, it still continued to be used to remove, or bar from offices, a number of persons, perhaps around an additional 100.

4. Inclusion of NGOs and victims of former regime in the preparation of the laws

Neither Law Nr. 1 nor Law Nr. 2 can be said to have included NGOs in their preparation. Law Nr. 2 may have involved some victims of the former Communist regime in its preparation, but this was not a major factor.

Reasons for deficiencies in exclusion: Both laws were enacted fairly early in the Albanian transition, and in an expedited manner. Civil society was only beginning to develop, although

several human rights groups did hold seminars on general questions, such as opening the files or restitution/rehabilitation of former political prisoners. The participation of civil society actors has become more common now and would be expected if laws like this were reintroduced.

5. Public debates on the laws

*Broad public debates before passing the lustration law*s: Neither Law Nr. 1 nor Law Nr. 2 underwent significant public debate.

Initiatives for discussions: None.

6. Proposals for a lustration law rejected

None.

7. Proposal for a new lustration law pending

Name of draft law: "Për kontrollin e figurës së personit zyrtar të zgjedhur apo të emëruar në organe të rëndësishme të shtetit" ("On checking the figure of an elected or appointed official in important state organs").
An English translation of this draft law is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (http://www.lustration.net/albania_documentation.pdf).

Date of proposal: 29 June 2004.

Proposed by: Three deputies from two of the small opposition parties in the Albanian Parliament, Nard Ndoka and Ilirjan Berzani from the Reformed Democratic Party and Alfred Cako from the National Front Party. Nard Ndoka and Alfred Cako have stated that they prepared the law after consultation with the last head of the verification commission under the 1995 law mentioned in the text, Nafiz Bezhani.

Main provisions: The draft law in its current form would provide that the following subjects would be checked as to whether they had been "collaborators"[2] with the secret police
1. the President, deputies, the Prime Minister, the Deputy Prime Minister, the ministers and deputy ministers;
2. civil servants of the high and medium management levels, as defined in Albania's 1999 civil service law;
3. prefects, chairmen of regional councils, mayors of municipalities and municipal units, communes and members of a municipal council;
4. directors of directorates and commanders of the Armed Forces in the Ministry of Defence and the State Information Service;

[2] The draft law defines a "collaborator" (Albanian "bashkëpunëtor") as including those who were employees or officers of the State Security. Since "collaborator" is usually taken to cover only non-employees, it would be better to use clearer terminology in the law. There has been much criticism of lustration laws when they only cover persons who were victims of the secret police apparatus (even if collaborating with it) while not covering the actual secret police officers and employees and their superiors in the party-state apparatus.

5. advisers in the Presidency, Assembly, Council of Ministers and the ministries;
6. judges and prosecutors at all levels;
7. directors of independent public institutions;
8. officials elected and appointed by the Assembly, the President of the Republic, the Prime Minister, the ministers or equivalent persons;
9. general directors, directors of directorates and chiefs of sectors (commissariats) at the central, regional and district levels, the General Directorate of the Police, the General Directorate of Taxation and the General Directorate of Customs;
10. all persons who have or seek to have management positions in political parties.

According to the draft law, a special commission would be created within the State Information Service consisting of five persons. The chair would be the general inspector of the Inspectorate for the Declaration of Assets (an existing institution), while the other four members would be appointed by the President, two on the proposal of the ruling parties and two from the opposition. The commission would meet behind closed doors and review the secret police files of anyone in the above categories about whom a request was made by any citizen or legal person. The person whose file was requested would have the opportunity to block its release by resigning from his position or refraining from running for office. Appointed persons (not elected ones) would be discharged from their positions if they turned out to have been collaborators of the Communist State Security and did not resign voluntarily.

Main intention of the draft law: Although not directed to opening Communist era secret police files to the public *per se*, the draft law was another major attempt to bring back a consciousness of the relations that current politicians, candidates and public officials had with the secret police, whether as officers or agents, or simple collaborators.

Discussion and voting in Parliament: As of the time of writing this report, the draft law has been discussed in two of the parliamentary commissions but has not been voted on. Although introduced with the intention that it would apply to Albania's next parliamentary elections, scheduled to be held in July 2005, the draft law is unlikely to be approved, or even voted on, before those elections.

8. Laws and procedures on public access to files of the secret services

The files of the Albanian secret services have never been available to the public.

Law Nr. 2 described above made the files available to the seven-member state commission that it set up, and in Article 13 made it a crime to use any such data publicly or to hide, destroy, falsify or otherwise manipulate any documentation from those files, or to make false public accusations against an individual. Article 16 of Law Nr. 2, the only article remaining in effect after 31 December 2001, provides that the files are now closed until the year 2025, and that the National Information Service (the successor to the State Security), the Ministry of the Interior (now known as the Ministry of Public Order) and the General Directorate of the State Archives are charged with maintaining them.

Activities of NGOs with respect to public access to the files: None at the time Law Nr. 2 was enacted, but there has been some in connection with the pending law and the current (2004) debates on opening the files.

Official reactions: None, except as set out above.

9. Proposals for other solutions

Proposals for other solutions: There have been limited discussions, but no formal proposals, for a truth commission. There has been no general amnesty of people connected to the Communist regime. Several dozen criminal proceedings took place in the 1990s resulting in the conviction and imprisonment of many people who had held important positions in the Party of Labour (including Ramiz Alia, the last Communist Party head and first president of post-Communist Albania). A number of laws providing restitution and other benefits to persons injured by the Communist regime have been enacted, but defective implementation has weakened their impact.

Main reasons for deficiencies and failures: There are many possible reasons that could be adduced, but it remains for each person to draw his or her own conclusions. At the beginning, the community of former politically persecuted persons and former prisoners of conscience was active in trying to obtain satisfaction for past wrongs, but the interest started to fade. People turned to their own private lives and the need to survive under the new conditions. The "collective amnesia" that has afflicted other post-Communist countries, or Spain after its civil war, was also a factor in Albania. (The first DP president of Albania, Sali Berisha, said after his 1992 election that "we are all jointly guilty, we all jointly suffered", a state of affairs that is conducive to such amnesia.)

Among the reasons why Albanian society did not do its own catharsis were the social and psychological changes, massive migration and emigration, lack of culture and lack of awareness of the need to establish a social memory. But it would seem, as some events suggest, that this failure of catharsis has left underlying problems unresolved, and aspects of them come to the surface from time to time.

10. General public debates on the past

Major public debates on the past: There have only been isolated debates over the past 14 years, many of them with a narrow focus.

After Law Nr. 2 described above went out of effect at the end of 2001, there was a temporary lull relating to the Communist past of Albania or the files of the secret police, but a kind of public debate re-emerged late in 2003 and early in 2004.

Among other things, a prominent Albanian writer, Ismail Kadare, published an open letter to the President of Albania, calling for the opening of the files of writers from the Communist era. He stated that his request was prompted by an appeal made to him by the relatives of Vilson Blloshmi and Genc Leka, two writers who had been executed toward the end of the Communist regime. They were the last two literary men sentenced to death - not only in Albania but across the Communist dictatorships of the region. Kadare's letter received a favourable response from President Moisiu, who suggested a legislative initiative on the issue. (It may be noted parenthetically that a book by the director of the state archives, Shaban Sinani, involving Kadare's own files, is about to be published.)

All of these events prompted a broader and rather stormy discussion, particularly in the press and the electronic media. Journalists and civil society members discussed the wisdom of such an action or of broader or different types of action in general. At the same time, former politically persecuted persons renewed their efforts for a law to give them compensation for

Communist era imprisonment, and while a law was enacted, they considered the level of compensation to be too low and the situation remains unsettled.

The public debate has, so far, primarily been anecdotal and it is being played out on a larger background that includes the frustration of many Albanians at the country's current political situation, the slow progress being made with integration into European institutions, international and internal dissatisfaction about crime and corruption, and the upcoming parliamentary elections, currently scheduled for July 2005.

Major period referred to in these public debates: The Communist regime in Albania is generally considered to have extended from 1945 to 1990 (when pluralism was permitted, in December of that year), 1991 (when the first pluralist parliamentary elections were held) or 1992 (when the parliamentary elections of 22 March were won by the Democratic Party). As noted, Law Nr. 2 of 1995-2001 used both December 1990 and March 1991 as cut-off dates. The post-Communist period, which includes the state of emergency of 1997, has generally not been the subject of any public debates.

Main topics of these debates: Human rights violations, political trials and other abuses during the Communist regime.

Main initiators of these discussions: As indicated, these discussions have been isolated. The Government itself has been the initiator of some discussion, but failure to follow through on restitution to the actual victims of the Communist regime has weakened the impact of any attempts made.

Segments of the society directly or indirectly involved in these debates: Deputies and other government personnel, NGO members, representatives of the media, students, writers.

Public interest in these debates and their effect on the public opinion: It cannot be quantified, but does not appear to have been significant.

Main reasons for the effects being so minor: The same factors noted above under paragraph 8, section on "main reasons for deficiencies and failures".

Country Overview: Bosnia and Herzegovina

Compiled by Nejra Cengic*

1. Lustration law passed

There is no lustration law in Bosnia and Herzegovina.

2. Proposals for lustration laws rejected

A lustration law as such was never proposed to the authorised body, and was consequently never in parliamentary procedure (Interview Halilagic).

3. Procedures assigned

None.

4. Implemented measures

None.

4. Inclusion of NGOs and victims of the former regime

None.

6. Public debates on law

None.

7. Laws and procedures on public access to files of the secret services

Legislation:

There is no separate legal act on public access to the files of the secret services in Bosnia and Herzegovina, neither has such a legal act ever been proposed. The issue of free access to

* Project Coordinator, Centre for Interdisciplinary Postgraduate Studies of the University of Sarajevo; Ms. Cengic's thanks for instructive discussions go to all of the experts who were available for interviews and who are named in the list of the sources; she thanks in particular Prof. Zdravko Grebo (Law Faculty, University of Sarajevo) and Mr. Ahmed Zilic (Lawyer, Sarajevo) for various discussions and Mr. Jakob Finci (Association for Truth and Reconciliation, Sarajevo) and Mr. Sino Abazovic (Faculty of Political Science, University of Sarajevo) for the very useful information in their written contributions named in the list of the sources. All information given in this overview refers to developments until 31 December 2004.

information in Bosnia and Herzegovina has been regulated within a broader legal act, the *Freedom Of Access To Information Act*.

The right of free access to information possessed by public authorities is based on the respective legislation on the state level (see "Freedom Of Access…" in the state "Official Gazette", Nr. 28/2000) and on the level of the entities (see the Act for the Federation in its "Official Gazette", Nr. 32/2001, the Act for the Republica Srpska in its "Official Gazette", Nr. 20/2001).

The laws are substantially identical, the only difference being the respective reference to the entire state, the Federation or the Republika Srpska. In its first article, the Act states that "the information in the control of public authorities is a valuable public resource", and that "public access to information promotes greater transparency and accountability of those authorities, and is essential to the democratic process". According to the Act, the disclosure of all information is the general rule and non-disclosure the exception; stipulations of non-disclosure are defined in Articles 4-10.

The term "information" is used in the broadest possible sense, so it means "any material which communicates facts, opinions, data, or any other matter, including any copy or portion thereof, regardless of physical form, characteristics, when it was created, or how it is classified" (Article 3). This means that everything may be regarded as information, from printed to written documents, including notes, correspondence, audio and video recording, photographs, etc. This refers to information from the past as well as to information that has been classified by a public body as "confidential", regardless of the questions as to when it was created and how it is classified (Recommendation 2002).

The main provisions enable any citizen to have access, without any restrictions, to such information to the greatest possible extent, if it is in accordance with the public interest. Without explaining the background of the request, any person is entitled to check all kinds of information, including personal information. That is the general rule that also applies to the so-called "confidential files" that were, or still are, controlled by the police, intelligence or other bodies (Recommendation 2002).

Exceptions (when a piece of information may not be disclosed) may exist, but only those stipulated by the Act (Articles 4-10), and explicitly "upon applying the public interest test" (Articles 5 and 9), by which the authorities can decide that, due to the public interest, non-disclosure is justified (Recommendation 2002).

Exceptions stipulated by the law refer to: information touching upon interests of defence and security, the protection of public safety, as well as interests of crime prevention and any preliminary criminal investigation (Article 6); confidential commercial information (Article 7); the protection of personal privacy (Article 8) (Recommendation 2002).

However, there is no possibility for an automatic denial of a request and non-disclosure of information purely because it is foreseen by the Act as exception. In this situation, there is the obligation of a public authority to apply the "public interest test". If the authority determines that the disclosure of a piece of information is in the public interest, it must be disclosed. If it is not, the information will be determined as an exception; the public authority has an obligation to explain its decision. In such a situation, it is possible to appeal against the public authority's decision in an administrative procedure, as well as through addressing the Ombudsman Institution or a court responsible (Recommendation 2002).

The Federation Ombudsmen published and forwarded several Special Reports concerning the application of the Act to certain public organs. Public attention was focused on Special Reports on secret files, particularly during electoral campaigns. There were some requests for the "publishing of all files concerning candidates possessed by intelligence services" so that the public could allegedly be "provided with all necessary information".

Reacting to such suggestions or requests, the Federation Ombudsmen stated that these were neither in conformity with the Act nor with the spirit of the European Convention on Human Rights and Fundamental Freedoms nor with the attitude of the European Court for Human Rights. A Special Report clarified that, according to the Law, the files in question should be accessible only to the respective persons and only in the way foreseen by the Law. Secret documents could “be accessible to third persons only exceptionally (when justified by public interest) and, eventually, when needed for science researches, under very specific conditions” (Report Ombudsman Institution 2002).

Implementation:

Article 22 of the Act for the Federation gives the Ombudsman Institution the right to direct all its proposals on the implementation to all competent bodies. Based hereupon, the Federation Ombudsman forwarded the “Recommendation on the Implementation of the Freedom to Information Act” to the Parliament and the Government of the Federation of Bosnia and Herzegovina and to other public bodies of the legislative, executive and judicial powers before the implementation had started.

A year later, within its annual report for 2002, the Federation Ombudsman Institution expressed its disappointment with the implementation of the law. According to the report, several deficiencies were particularly visible, e.g. a low public awareness of the Act and insufficient or even non-existing preparatory work of the public authorities regarding the implementation of the law. The report also stated that the office had received numerous complaints from citizens.

Concluding from several characteristic cases, the Ombudsman Institution named a lack of knowledge of the legislation; no or wrong knowledge of other laws (some denials were illegally based on other, irrelevant regulations) and passivity of the current administration as possible reasons for the “silence of the administration with respect to the law application. The report also noted that all claimants had addressed the Ombudsman Institution directly, without having exerted their right to a preceding appeal to second instance administrative bodies. According to the report, this was due partly to deficiencies of the public bodies which frequently did not correctly advise the respective citizens and partly to uncertainties contained within the law itself (Report Ombudsman Institution 2002).

On the basis of these facts and conclusions, the Ombudsman Institution expressed its opinion that a thorough analysis of the law implementation by the Federation Parliament would be desirable and necessary in order to resolve certain dilemmas. It emphasised two main dilemmas – the procedure of lodging a complaint and the issue of defining “public interest” (Report Ombudsman Institution 2002).

Despite these clear recommendations, no substantial progress was achieved. The Annual Report of the Ombudsman Institution for the year 2003 stated that it could not notice any significant improvement.

Various reports indicate that the Republika Srpska, where the issue is regulated by an identical law, faces similar problems.

Apart from the significant work of the Ombudsman Institution, the Center for Free Access to Information has to be mentioned in connection with the issue of law implementation. It provides training, advice and free legal representation to people seeking information to resolve personal issues or to participate in the democratic process. Its experiences till now confirm the observations and conclusions of the Ombudsman Institution. Since the registration of this Center, there was only one case in which a person approached it in order to seek assistance in accessing his personal file (Interview Krehic).

Public debates on the files issue:

A significant public debate on the files issue arose after the publication of the bestselling four-volume set “Cuvari Jugoslavije” (The Guardians of Yugoslavia) by Ivan Beslic in early November 2003. The book includes top-secret documents from the Bosnian branch of the former Yugoslav State Security Service (SDB) and a list of 1,350 names of informants and operatives active from 1970 until 1990. Two volumes deal with Bosnian Croat agents and informants, one with Bosniaks, and a fourth with Bosnian Serbs (Alic 2003).

The debates touched on topics like the intentions of the author, the possibility of using the book or parts of it as a political tool, the selection of the documents and the names. In general, the opinion presented in the media was deeply divided. The selection of the named collaborators, however, was considered by most of the commentators as highly questionable, since many names of high-ranking members of the Yugoslav secret police had not been included (Lovrenovic 2003). The question that provoked the greatest interest was how and from whom the author had got the classified documents; numerous versions of answers were rumoured, without a definite resolution. In any event, legal experts assessed that the publication was a violation of several laws, among them the Archive Law and the laws on the protection of personal information.

8. Proposals on and implementation of other solutions

General background: The fall of communism in Bosnia and Herzegovina has not been followed, as in many post-communist countries, by the process of the so-called de-communisation, but by a very cruel war (1992-1995). The consequences of this war are still very present. Due to these circumstances, public interest in dealing with the past is focused much more on the recent past and especially on the war period than on the period of communist authoritarianism. While a certain part of the population recognises the importance and desirability of coping with some political issues and processes from the communist time, the vast majority of initiatives are oriented towards treating war-related issues and consequences. This is illustrated, for example, by the work of the Helsinki Committee for Human Rights in Bosnia and Herzegovina, which deals with different cases of human rights violations, all of them referring to the post-communist period (Interview Dizdarevic).

Although in Bosnia and Herzegovina a lustration law has never been in force, the relatively short pre-war period of nationalistic parties rule (1991-1992) had also been a period of non-transparent and quite effective "lustration". Removal policies during this period focused on the state institutions in charge of security and financing (high-ranking police officers and members of the state security service, military commanders, and selected public servants). This "lustration" only affected those in opposition to the new establishment, as well as those not willing to cooperate; it is important to stress that removals were not based on wrongdoings of the respective persons during the communist past. As it has been pointed out, the important selection criteria were: ethnic affiliation, a formal declaration of party membership, loyalty towards the respective party leadership and unreserved devotion to the so-called national (i.e. ethnic) affairs. If these criteria were met, candidates could be selected, no matter how their past record had been and despite the fact that many of them had a similar background to those removed (Abazovic 2004).

Major initiatives: In recent times, some comprehensive vetting efforts have taken place in Bosnia and Herzegovina with respect to the police and the judiciary. In a (de)certification process of police officers**,** UNMBIH (the UN Mission in Bosnia and Herzegovina) vetted approximately 24,000 police officers between 1999 and 2002. With respect to the judiciary, three High Judicial and Prosecutorial Councils screened the appointments of approximately 1,000 judges and prosecutors between 2002 and 2004 (Finci 2004). This process is still ongoing. There has also been a serious effort to establish a Truth and Reconciliation Commission. Since these were the most important initiatives, the following paragraphs concentrate on them:

a) *De-certification process of police officers*;
b) *Screening and re-appointment of judges and prosecutors*;
c) *Establishment of a Truth and Reconciliation Commission*.

It should be noted that, in accordance with the explanation in the introduction to this section, all three initiatives were conducted mainly as a response to the consequences resulting from the war, rather than as a reaction to the communist period.

Proposals by:

a) The *De-certification process of police officers* was proposed and implemented by UNMBIH in accordance with the Dayton Peace Agreement.

b) The *screening and re-appointment of judges and prosecutors* was proposed by the Office of the High Representative whose mandate derives from the General Framework Agreement for Peace of 14 December 1995 (the Dayton-Paris Peace Accords) and .who is responsible for co-ordinating the implementation of the civilian aspects of the agreement. The first attempt to implement the proposal was made by the Independent Judicial Commission, the lead agency on judicial reform. In May 2000, the High Representative promulgated laws on the judicial and prosecutorial services to improve the independence of both (the texts are available online at http://www.ohr.int).

c) The establishment of the *Truth and Reconciliation Commission* was proposed by the Citizens' Association for Truth and Reconciliation of Bosnia and Herzegovina. A draft law was prepared, but never adopted.

Main arguments in favour of proposals:

a) The main arguments in favour of the *De-certification process of police officers* were based on the fact that at the end of the 1990s there were far more police officers than at the beginning of the wars and far more than are needed in a democratic state of the size of Bosnia and Herzegovina. Moreover, in the early post-war years, police officers operated in ethnically homogeneous forces that mainly served nationalistic agendas (Finci 2004).

b) The state of the *judiciary* was particularly weak in the early post-Dayton years, characterised by the absence of an independent judiciary. In May 2000, the High Representative promulgated laws on judicial and prosecutorial services to improve the independence of both. This process was never adequately resourced and ended in failure. As a consequence, in late 2001, the Independent Judicial Commission (established by the Office of the High Representative), the lead agency on judicial reform, developed a new strategy for the reform. The main aim was to reduce the number of judges and make the judicial and prosecutorial services more ethnically diverse through a formal re-application and appointment process (Finci 2004).

c) The main argument in favour of the establishment of the *Truth and Reconciliation Commission* was based on the assessment that the disclosure of the truth on the war is a precondition for reconciliation.

Main arguments against proposals:

Arguments were mainly raised against the proposal of establishing a *Truth and Reconciliation Commission*. Some of the arguments often mentioned in the media are that the eventual functioning of this commission could possibly overlap and undermine the work of the International Criminal Tribunal for the former Yugoslavia (ICTY). Another argument stressed by certain interest groups was that such a commission could only work effectively if it was a regional one for all former Yugoslav Republics.

Implementation:

While the De-certification of police officers and the screening and re-appointment of judges and prosecutors were implemented, the Truth and Reconciliation Commission was not established.

a) With respect to the *De-certification of police officers*, the UNMIBH Human Rights Office established the Local Police Registry Section made up of international police officers, local lawyers and administrators, and UN professional staff. The vetting process itself consisted of three stages: mandatory registration, initial screening and final in-depth check. De-certified police officers were barred from serving anywhere in the country. Decisions about de-certification were subjects to an internal appeal only; no oral hearing was ensured. In the end, approximately two thirds of those vetted were provisionally certified to exercise police power. Over 90% of those were granted full certification (Finci 2004, based on the Report of the Secretary General 2002).

Although considered by the UN in terms of mandate implementation as a success, public perceptions of the process were mixed. Some criticised the process of having been too slow and too closed. Within the police itself, many officers, but particularly those de-certified, questioned the fairness of the procedures, and as many as 150 former police officers challenged their de-certification in domestic courts after the departure of the UNMIBH which

was replaced in 2003 by the European Union Police Mission. The vague and non-legislated criteria applied by the UNMIBH and the fact that the whole documentation was sent away for storage at the UN headquarters in New York made the situation even more complex. The High Representative, Lord Paddy Ashdown, stressed the danger that some practices within this process could be in contradiction to the rule of law. (Finci 2004)

b) With respect to the *screening and re-appointment of judges and prosecutors*, three High Judicial and Prosecutorial Councils were created by the High Representative in 2002. The Councils are permanent bodies comprising elected and appointed members from the legal and judicial professions. International members have been appointed during a transitional period as well. The task of the Councils is to appoint, transfer, train, remove and discipline judges and prosecutors (Finci 2004).

According to the foreseen procedures, judges and prosecutors were required to submit a detailed application and disclosure form which also included questions about wartime activities. After this the Council nomination panel would review the application, interview the applicant and make a recommendation. Unsuccessful applicants have the opportunity to submit requests for re-consideration (Finci 2004).

Since this process is still ongoing, it is very difficult to assess its overall impact. Some initial concerns may, however, be noted. The most significant one is that the goal of restoring the multi-ethnic character of the judicial and prosecutorial services appears not to have been fully achieved, particularly in the Republika Srpska, where there was an insufficient pool of minority candidates. Other doubts are related to the limited nature of the investigations conducted into the applicants' suspected wartime activities. Finally, a significant number of complaints were received and the high costs and staff size demanded by the procedure were publicly criticised (Finci 2004).

9. General public debates on the past

Major general public debates on the past: None of the kind practiced in some other post-communist countries, i.e. focusing on the communist era. The first post-communist elites used the referral to the communist period as a tool for the legitimisation of their power. In this respect, each nationalistic party considered itself as the major victim of the former regime.

Main reasons for focus of debates: The main reason was the fact that soon after the fall of communism, the war started in Bosnia and Herzegovina. The conflict and its cruelties completely moved the focus away from the communist era to the war period (1992 – 1995). What happened during the war, has not been regarded by the public as having any connection to the communist rule; on the contrary, it created nostalgic sentiments within a significant part of the population which are still present. The general public is currently not concerned with any kind of de-communisation, but with the disclosure of war related facts.

Main topics and initiators of debates: During the short pre-war period after the fall of communism (1991-1992), presenting oneself as a victim of the former system had been a widespread phenomenon. Debates on this topic were mainly initiated by politicians and a significant part of the media, which served the interests of the "new" political elites. However, since a considerable portion of these elites had actually belonged to the former political establishment, a major public debate on this issue also arose. Leaders of the religious communities took an active part in the public discussion about the past as well.

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Country Overview: Croatia

Compiled by Goranka Lalic*

1. Lustration law passed

None.

2. Proposal for lustration law rejected

Name of Proposal: Prijedlog zakona o otklanjaju posljedica totalitarnog komunističkog režima (Draft Law on Removing the Consequences of the Totalitarian Communist Regime).

Proposed by: Croatian Party of Rights.

Dates of proposal: 11 February 1998 and 20 October 1999.

Main contents and provisions of proposal: The draft law mainly aimed to systematically bar high-ranking party and state officials of the former regime from holding high-ranking offices in the new state, if in the past these persons had violated human rights and opposed the establishment of democracy.

The draft law contained 18 articles. It defined the general intention and the time of application (15 May 1945 until 30 May 1990), as well as the victims of persecution by the totalitarian communist regime and the institutions responsible for carrying out surveillance and persecution (the Communist Party of Croatia, the secret police and the secret intelligence services). According to the draft law, persons who had been "privileged members of the totalitarian communist regime" would have to be prevented from holding high-ranking offices in the new state. This referred to:

Persons who had had unlimited or partial access to information collected by the secret intelligence services, particularly persons who had been authorised to dispose of the gathered information in the way they wished to do;

Persons who had been privileged by the secret services or persons who had obtained material privileges and other advantages, entirely denied to other citizens or denied to an equal extent or under equal conditions to other citizens;

Persons who had been pardoned by the Communist Party, the secret police and the intelligence services after having committed criminal acts or in cases in which prosecution of

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committed criminal acts had not been initiated at all because the former secret agents had decided to co-operate with the new authorities;

Persons who were ordered by the secret police or the secret service to plan, support, organise, prepare or commit criminal acts in the territory of the Republic of Croatia and abroad.

The draft law stated who should be considered an active employee, in particular, a secret service agent, and who was to be considered simply an employee and not a secret agent working for the intelligence service. It also stated who should be exempt from the application: persons persecuted by the former regime and prevented from promoting or supporting national rights and democracy.

It concluded that for the purpose of implementation it was necessary to create an archive consisting of all documents belonging to the Communist Party and its successors and also an archive of the documents of the secret and the intelligence services. It proposed that the Parliament should nominate a State Commissioner in charge of these archives who would collect and administer the documents for the period of five years, without the possibility of re-election. The duty of the commissioner would be to check whether high-ranking state officials in the current period had been privileged members of the former regime or secret service agents, especially members of the intelligence service. According to the draft law, holders of or candidates for the following offices should be lustrated:

President of the state;
President, vice-president, ministers and members of the government;
Members of Parliament;
Ambassadors, vice consuls and consuls;
Heads of government offices and administration units within ministries;
Employees selected by or nominated by the parliament and the government;
Officials of the local self-administration and the administration confirmed by the President of the Republic of Croatia;
University professors;
Editors and journalists;
Notaries, judges, state prosecutors and the Ombudsman;
Members of executive or supervisory boards of public enterprises and all firms and funds with a majority share of the property held by the state;
Secret service employees;
Officers of the army and the Ministry of the Interior;
Members of electoral commissions.

If the results of the inquiry proved that the person in question was a privileged member of the former regime as defined or an agent of the secret service or the intelligence service, the commissioner should demand that the respective person withdraws from his/her office within the period of 8 days or give up his/her candidature. If the person refuses to do so, the State Commissioner would inform the Lustration Court. The Court would be formed with a 10-year mandate and would consist of 5 judges chosen by the parliament; it would apply the procedure prescribed by the Constitutional Court to its work. The decision of the Court would be final, and the respective person would be prohibited from performing public duties until the end of the mandate of the Lustration Court, in any event for a period of not less than five years.

Support by other parties, parliamentary groups: None.

Support by NGOs: None.

Rejection by other parties, parliamentary groups: The Croatian Party of Rights initiated a parliamentary procedure with respect to its draft law for the first time in February 1998, but the topic was removed from the agenda, due mainly to the proposal of the members of the Croatian Democratic Union and of other parties.

In October 1999, the draft law was sent to parliamentary procedure again, but, once again, the members of the Croatian Democratic Union suggested that the topic should be removed from the agenda. Main arguments of the rejection were based on the assessment that the situation in ex-Yugoslavia had not been the same as in other countries of Eastern Europe and that the initiative came too late. 77 Members of the Parliament voted for removing the topic from the agenda, only two voted against its removal.

Debate in parliament: The debate took place between members of the Croatian Democratic Union (HDZ) on behalf of the Club of HDZ representatives, and members of the Croatian Party of Rights.

3. Procedures assigned

None.

4. Measures implemented

None.

4. Inclusion of NGOs and victims of the former regime

None.

6. Public debates on lustration legislation

There were no broad public debates on the necessity of adopting lustration legislation.

7. Laws and procedures on public access to files of the secret services

Legislation on public access to the files of the secret services: No law was adopted (and none proposed) on the issue of public access to the files of the secret services.

The Law on the Security Services of the Republic of Croatia was passed on 21 March 2002, and has been applied since 1 April 2002. The key intention of the law is to initiate the professionalisation and de-politisation of the secret services as well as the establishment of an appropriate model of supervision of their work (internal and external control). The law makes no distinction between the period from 1945 until 1990 and the period after 1990. Principally, the law allows for access to the documents and material. Article 23 states that security services are obliged to inform the citizens, at each individual request, whether any procedure

such as collecting data and information on that particular individual has been undertaken, and whether his/her personal data has been recorded and updated by the secret services.

The security services are not obliged to act in accordance with the provisions of the law in case the information could lead to endangering of the security of other persons, or in case the information could lead to harmful consequences for the national security and the interests of the Republic of Croatia. If these reasons are not given, the security service is obliged to act according to the provision. In 2001, the Minister of the Interior submitted 38,000 files (from the period 1946-1990) from the Croatian State Archives of the Former Socialist Republic of Croatia and around 650 files from the Service for the Protection of the Constitutional Order (from the period 1990-2000), and the citizens on whose behalf these files were opened, gained free access to these files.

8. Proposals for and implementation of other solutions

General background and development: The situation in Croatia is extremely complex due to various kinds of non- or anti-democratic regimes in the historical development of the country (fascist totalitarian regime, communist authoritarian regime and national authoritarian regime of populist nature after 1990). The regime in power, after the fall of communism, has not shown any readiness to legally confront the past nor to exclude from public life those who in any way violated human rights. It was believed that only the Serb element was the bearer of the totalitarian character of the communist regime of ex-Yugoslavia. In spite of the fact that Croatia is a member of the Council of Europe, resolution 1096 of the Parliamentary Assembly of the Council of Europe from 1996, (which obliges new democracies to correct injustices done during totalitarian regimes and impose legal sanctions against those who took part in human rights violations), did not have any impact in Croatia. Since the fall of the communist regime, no rational lustration process has been carried out, but a sort of «cleansing» within the public administration and the judiciary system has been done. Such a "covered up" lustration was not carried out according to clear criteria. Instead of removing those who had played an active role in human rights violations or in the repressive apparatus, the then authorities removed those who were considered "nationally unsuitable" or in some other way unacceptable to the new authoritarian regime.

Judiciary system: "Reforms" from 1990-1999 in the Croatian judiciary system may better be qualified as a lack of reform, or as anti-reform. In fact, the very absence of a feasible and transparent mid- and long-range strategy of development was a clear political message to the judicial ranks. Therefore, at least until 1997, there was a strong outflow of judges to other branches of the judicial profession (mostly to the ranks of practicing lawyers and public notaries). To make this tendency even worse, most of the judges who left were among the best qualified and experienced ones. Of course, competent judges with a high reputation had the best possibilities of an alternative career, and many of them considered that their current provisional status and uncertain future of their job (which lasted seven and more years in certain courts) was too humiliating for them to stay in office.

During the period from early 1991 to early 1994, the judiciary was apparently in an informal legal and constitutional limbo. Though constitutionally well-protected, immovable, independent and autonomous, with a life tenure (or at least with a "until retirement" tenure), judges were probably the least protected and the most fragile species in the professional universe in this period. During these years almost none of the warranties were applied, and judges were put into the position of "permanent provisionality". The constitution provided that a body named the "State Judicial Council" had to appoint, discipline and remove the

judges. And yet, until 1994 there was no such body – and no precise rules on its composition. The constitution required a life tenure. And yet, it was regarded that such a tenure had to be given only to judges appointed by the State Judicial Council. Previous legislation was abrogated – and yet, there were still about a thousand active judges who were, according to previous rules, appointed with a mandate of eight years. In such a vacuum (that was, apparently, not entirely accidental), practice responded in various ways. E. g., judges continued to be appointed and removed from office by the Croatian Sabor (Parliament). In some five years, the mandate of a significant portion of judges expired; some of the judges simply continued to perform their functions; some of them received formal decrees on the expiry of their mandate and the consequent cessation of their office; and some were simply notified that they had to leave their offices due to the "new situation".

The judiciary itself reacted as expected – many judges started to leave the profession. The beginning of the 1990s was the period of the largest exodus of judges. According to fragmentary research by the Croatian Law Centre (HPC), in just two years (1990 and 1991) about 200 judges (one sixth to one fifth of all judges) left the judiciary. This number is not final, because it was obtained on the basis of the analysis of the published appointments in the Narodne novine (Official Gazette) – and, according to some statements, there were also other removals that miraculously escaped the attention of this official publisher of legal news and information. According to provisional results of the as yet unfinished research of the HPC, in the period 1990-1996 there were over 2,200 dismissals and appointments of judges and state attorneys recorded in the Official Gazette - and this number is still lower than the real one, since in some periods dismissals were obviously not reported in the Official Gazette. Moreover, there was no systematic reporting on those judges who were dismissed by the very fact that they were not re-appointed in the course of the first appointment by the SJC. From the recorded dismissals, there were 361 cases in which judges were removed without any explanation.

The defenders of these governmental interventions in the judicial area basically invoked two arguments that aimed to legitimise the brutality of the intervention. On one hand, it was claimed that "old" judges were the inheritors of the former, communist regime, and that many of them were compromised by their participation in political processes of the socialist era. On the other hand, it was claimed that, in the past, judges had been recruited disproportionately from the Serbian population, as the political elite of former Yugoslavia, and that (especially under conditions of war with Serbia) they should be replaced by "loyal" Croat cadres.

Both arguments had a certain weight – but were, in our opinion, largely overemphasised and therefore wrong. Even if they had been true, it might be still questionable as to whether they could fully legitimise the actions taken. However, it should be stated, on the account of the first argument, that the judiciary in the former communist regime was, as a whole, largely neutral, although isolated and marginalised. In fact, since the systems of social regulation on "important issues" were to be found elsewhere (in political committees and the communist party elite), the judiciary was simply not interesting enough to be the target of political manipulations. Naturally, there were some judges and some cases (primarily in criminal proceedings) who had to carry out the orders of state politics. But there were times when even judges disobeyed communist politics. For example, several high ranking judges adhered to strict codes of judicial behaviour in the 1970s, and when communist hard-liners struck against the liberal and national movement of the "Croatian Spring" in 1971, they refused to sentence the accused in the political processes and dismissed the charges – until they themselves left office or were removed. Thus, the number of "compromised" and "pro-communist" judges was low, whereas the large majority did not hold any mortgages from the past – apart from the mere fact that they were appointed in "other times".

The second argument, pointing at the ethnic composition of the Croatian courts, is per se discriminatory and has to be rejected. If we take it seriously for the purposes of a hypothetical exercise, it should be stressed that, in the early 1990s, there was perhaps a slight overrepresentation of judges of the minority ethnic groups in Croatia. But even if we disregard the arguments in favour of a policy of positive discrimination, the reaction was so radical that, from 1990 to 1999, the situation was turned upside-down to the extent that some may even speak of "ethnic cleansing" of the judicial ranks. According to the (unpublished and apparently confidential) statistics of the Ministry of Justice from May 1999, in Croatia (including the internationally protected area of Eastern Slavonia with controlled warranties of proportional ethic participation) 93,6% of Croatian judges were ethnic Croats, 3,1% ethnic Serbs and 3,3% belonged to "other ethnic groups".

Public administration: There are no statistics on removals from public administration offices.

Media: Some findings conclude that 400-600 journalists were "removed" during the period 1990-1992, but no official data is available on this issue.

Public discussions or ruling on implementation: None.

9. General public debates on the past

Major public debates on the past: There were practically no major public debates on the past. In spite of the fact that access to the European Union and the establishment of the rule of law were emphasised as the main goals of the Croatian policy, confrontations with the consequences of the past authoritarian regimes remained isolated cases.

Major topics and initiators of public debates on the past: Most of the public discussions on the past were concentrated on the relationship between Ustashas and Partisans as well as on the crimes committed by the Partisans in the Second World War. It was mainly various Veteran organisations as well as radical right – wing oriented parties that initiated such discussions.

Main reasons for deficiencies: Apart from the war events in the Republic of Croatia in the period from 1990 until 1995, the key factor was the fact that many political actors and high officials of the party in power were members of the past regime. The decisive division line towards the communist regime was marked by the question of the readiness to participate in the populist system in power in the period 1990-2000.

Institutions, organisations, parties displaying a lack of interest in, or even preventing general public debates on the past: Mainly the Croatian Democratic Union.

Opinion polls conducted on this topic: None.

Direct or indirect effects of public debates on the past on legislation and institutions: None.

Country Overview: Republic of Macedonia[1]

Compiled by Goce Adamceski[2]

1. Lustration law passed

None.

2. Proposals for lustration laws rejected

None.

3. Procedures assigned

None.

4. Implemented measures

None.

4. Inclusion of NGOs and victims of the former regime

None.

6. Public debates on a lustration law

There were no major public debates on lustration legislation. Some public debates touched upon issues connected with lustration. For example, a debate arose when the rehabilitation of dissidents was a possible subject of legal regulation, but no substantial result was achieved. NGOs supported several debates on former dissidents in Macedonia, focussing on their legal status and restitution legislation, among other issues. (Details, but only in Macedonian language, are available on the web page of "Euro-Balkan", see http://www.euba.org.mk/disinmk.htm and http://www.euba.org.mk/Mircev.htm.)

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[1] The author uses the constitutional name of the country, i.e. Republic of Macedonia, or just Macedonia, in the title as well as in the whole article. In its work, the CDRSEE uses the name which is applied by international organisations like the UN or the EU, i.e. The former Yugoslav Republic of Macedonia.

[2] Project Coordinator, Foundation Open Society Institute Macedonia; Mr. Adamceski's thanks for instructive discussions on topics of this synopsis go particularly to Prof. Biljana Vankovska (Faculty of Philosophy, University of Skopje), Prof. Dimitar Mircev (Faculty of Social Sciences, Skopje), Mr. Iso Rusi (Editor-in-chief, Lobi, Skopje), Prof. Kadri Haxhihamza (Medical High School, Skopje), Mr. Zarko Hadzi Zafirov (Staff Attorney, American Bar Association – Central and East European and Eurasian Law Initiative, ABA-CEELI, Skopje) and Mr Agim Jonuz (Spokesman of the Government of the Republic of Macedonia, Skopje).

7. Laws and procedures on public access to files of the secret services

Legislation:

The law on the access to the files of the secret service was enacted in 2000. Its official name is: “Law on handling personal files kept by the State Security Service”. The law was published in the „Official Gazette of the Republic of Macedonia“, no. 52, on 5 July 2000. It had been proposed by then Minister of Interior Affairs, Ms. Dosta Dimovska, at that time one of the leading politicians of the national conservative party VMRO-DPMNE (Internal Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity). By the enactment of this law, 15,000 files were made accessible to the persons who had been observed and prosecuted by the state security services.

The law was rather unusual compared to similar laws in other countries of Central and Eastern European, because it determined the period from 1945 till the day it entered into force (in July 2000) as its time of application. The main reason for this approach was the notion that after the Republic of Macedonia had gained independence (September 1991), the secret services had not really stopped observing the persons that had been observed under the previous regime. It has to be added, however, that it later became clear that the intensive maintenance of the files had lasted until the mid-1980s.

The law also regulated the procedure of acquiring information on, and access to, personal files kept by the former State Security Service (Office for Security and Counterintelligence of the Ministry of Interior Affairs) and the procedure for the further safeguarding, use and disposal of the files. Therefore, it defined several key terms such as personal file, the persons who have access, the bodies and commissions that deal further with the files. Most of the specific characteristics of the law were included in Chapters II, III and IV which covered 70 percent of the law provisions.

Chapter II dealt with the procedure for access to personal files. The main characteristic of this procedure was related to the request for access. A deadline was set, which granted the possibility of raising requests for access within one year after the law had come into force; this meant that a request could be raised until mid-July 2001. The request had to be lodged with the Ministry of Interior Affairs (the key institution in implementing the procedure) which would provide the file to the requesting person. The procedure proved to be highly bureaucratic and ensured a strong protection for officials of the Ministry of Interior Affairs. For example, information within the files on officials who had worked on them as well as on persons who had provided information to the State Security Service had to be made illegible (Article 11). The highly bureaucratic approach was also evident in the establishment of an additional procedure, if the requesting persons were interested in the names of the officials and informers involved in their case. The original files were not accessible to be viewed, only copies. It was also forbidden to take pictures, damage or remove the personal file.

Chapter III regulated the control of the procedure and the use of personal files. For this purpose, a Parliamentary Commission was established. It consisted of MPs as well as representatives from other institutions. The Ministry of Interior Affairs continuously informed the commission on the access to the files. After the law had expired, the Ministry prepared a report on the implementation of the law that was presented to the Parliament.

Chapter IV regulated the procedure for the safeguarding, use and disposal of personal files. It was determined that a file had to be transferred to the Archives if a governmental commission found out that this file was of scientific, historic or cultural nature. This process had to be done within six months after the law had expired. Once a file had been transferred to the Archives, it was not considered to be officially secret anymore. Files with no historical, scientific or cultural heritage were destroyed within six months after the law had expired.

Implementation:
The law on the access to the files of the secret service was implemented from July 2000 until July 2001. The Ministry of Interior Affairs never presented the precise number of accessed files to the public. In addition, the report that the Ministry had prepared for the Parliament was also never made public. Bearing in mind that the law was implemented in the period when the Republic of Macedonia was in its biggest security crisis since gaining independence, it could be expected that public interest in this issue would have been rather low at the time. The law only attracted some media interest in the first three months of its application, which was often connected to the local elections that took place in September 2000. In this context, some initiatives were started with the aim of identifying certain candidates for political posts as collaborators or informants of the secret service.

8. Proposals on and implementation of other solutions

Discussion on further measures:

Shortly after the law on the access to the files of the secret service had been passed, a discussion on further measures was raised within the Government. This time the debate focused on the question as to whether a law should be adopted that would oblige future ministers, high-ranking state officials and MPs to state whether they had been collaborators or informers of the state security service. However, this issue remained only a discussion subject; no official initiative for a respective legislation was ever taken. The reason was the obvious propagandistic character of the discussion that had been initiated. Once again, this was connected with the local elections in September 2000. Supporters of the idea (mainly VMRO-DPMNE and some block parties representing parts of the Albanian community) wanted to improve their pre electoral ratings by focusing on the socialist period. In this context, a series of articles was published by the Macedonian Information Agency (MIA) in the period between July and September 2000.

Amnesty law:

Although not related to the socialist period or the developments in the 1990s, it is important to mention and explain the Amnesty law of March 2002 in the context of this overview. It was published in the Official Gazette of the Republic of Macedonia, Nr. 18/2002, dated 8 March 2002. The Amnesty law was the first legal outcome of the Ohrid Framework Agreement (13 August 2001) which led to the end of the military conflict in the country in 2001. This law created an amnesty for further investigative and legal procedures and cancelled the jail sentences for all persons (citizens of the Republic of Macedonia, persons legally residing as well as persons having family or property in the country) who were found to have prepared or conducted criminal activities connected with the conflict in 2001 prior to 26 September 2001. As a result of this law, four main legal consequences were introduced for the persons involved in the 2001 conflict:

1. All persons who were suspected of having prepared or conducted criminal activities up to 26 September 2001 were freed form further legal proceedings;
2. All criminal procedures already started for all persons who were suspected of having prepared or conducted criminal activities up to 26 September 2001 were stopped;
3. All persons who were suspected of having prepared or conducted criminal activities up to 26 September 2001 were liberated from further jail sentences;
4. The verdicts and the legal consequences for all persons who were suspected of having prepared or conducted criminal activities up to 26 September 2001 were erased.

A total number of 270 persons who had been imprisoned and awaiting legal proceedings were free after the law entered into force. The law applied to those persons who had handed over their weapons up to 26 September 2001, which was the last day of the weapons harvest operation.

This law was one of the main pre-requisites for the implementation of the provisions of the Ohrid Framework Agreement, providing the possibility for many Albanians to be reintegrated in the social and political life of the country.

Generally welcomed and supported by the Albanians and by the international community, this law was only partly supported by the ethnic Macedonians. Many of them considered it to be a justification for the activities of the UÇK ("National Liberation Army") during the conflict. Even the broadcast of the parliamentary session on the law enactment was curtailed because of the fear that it might lead to riots by ethnic Macedonians.

Nevertheless, the law provided a basis for the peaceful development of the Macedonian society. After the enactment, the Macedonian Police could peacefully penetrate all areas which had not been under their control, up to that point. The developments in the following years showed that this unique legislation act in this part of Europe could be considered to be rather successfully implemented and serving the goals it was drafted for.

9. General public debates on the past

Major public debates on the past: There were very few debates on the past, none of them major, and those that took place only touched on a limited number of issues, with only partial consideration.

Main reasons: Bearing in mind that the "Euro-Atlantic orientation" and the establishment of the rule of law were emphasised as the main goals of the Macedonian policy, the confrontation with the consequences of the past authoritarian regimes was considered to be of minor importance. In addition, the post-1945 period is generally assessed as a period of formation and fostering of the Macedonian State and therefore perceived rather positively. Its authoritarian character is often de-emphasised. Finally, many of the key political actors and high-ranking officials of the parties in power had played themselves a prominent role within the former regime.

Institutions, organisations, parties displaying a lack of interest in, or even preventing general public debates on the past: Mainly the Social Democratic Union (in a certain sense, the inheritor of the League of Communists of Macedonia), but also some high-ranking officials of the VMRO – DPMNE and some block parties representing parts of the Albanian community.

Main topics and controversies of debates on the past: a) Acts against (mainly pro-Western orientated) persons promoting greater Macedonian autonomy and a higher degree of independence from Belgrade-centred power; b) Attempts by the representatives of the Albanian community in Macedonia to promote greater autonomy for the Albanians; c) Activities of and actions against liberal dissidents.

Main initiators of discussions: NGOs.

Opinion polls conducted on this topic: None.

Direct or indirect effects of public debates on the past on legislation and institutions: None.

Country Overview: Serbia and Montenegro

Compiled by Aleksandar Resanovic*

1. Lustration law passed

In the Republic of Serbia, a lustration law was passed.

Official name: Zakon o odgovornosti za krshenje ljudskih prava (Accountability for Human Rights Violations Act).

Date of passage: 30 May 2003.

Official publication in: Official Gazette of the Republic of Serbia, no. 58/2003; correction in no. 61/2003.
The English translation of the law is available on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans* (www.lustration.net);
see http://www.lustration.net/human_rights.pdf

Procedure and margin of majority in parliament: Emergency procedure, 111 votes in favour, one against, 15 abstentions.

Proposed by: Six Members of the Parliament: Natasa Micic (former President of the Parliament), Dr. Dragor Hiber, Dr. Milos Lucic, Ljubisa Kesic, Sandor Melank, and Sima Radulovic.

Accepted by: Members of the Democratic Party, the Civil Alliance of Serbia, the Social Democratic Union, the Demochristian Party, and some independent Members of Parliament.

Rejected by: One member of the Socialist Party of Serbia.

Main provisions: Article 1 (Subject of the Law), Article 4 (Time of Application of this Law), Article 5 (General Forms of Human Rights Violations), Article 10 (Persons accountable for human rights violations).

Amendments: None.

Time of Application: All human rights violations occurring after 23 March 1976, the day that the International Covenant on Civil and Political Rights came into effect, under terms set out by this Law (Article 4).

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* Lawyer, Director of the Center for Antiwar Action (CAA) in Belgrade. The editor's thanks for instructive discussions on topics of this synopsis go particularly to Prof. Dr. Vesna Rakic-Vodinelic (Director, Institute for Comparative Law, Belgrade) and to Prof. Dr. Bogoljub Milosavljevic (Faculty of Business Law, Belgrade). All information given in this overview refers to developments up to 31 December 2004.

2. Proposals for a lustration law rejected

None.

3. Procedures assigned in the lustration law

Main provisions on procedures: Article 11 (Participants in Proceedings); Article 12 (Investigation of Individual Accountability); Articles 14-17 (Vetting Prior to Appointment); Articles 18-21 (Vetting After Appointment).

Additional decrees on procedures: None.

Persons to be affected by implementation of the law: The overall number of affected persons is unknown. Article 10 states that lustration proceedings are instituted against persons holding, or are candidates for following office:
1. Deputies of the National or Provincial Assemblies;
2. President of the Republic
3. Prime Minister and members of the national government or provincial executive councils;
4. Mayor and municipal president and deputy president;
5. President and members of the executive board of the council of a local self-government unit;
6. Secretary of the National or Provincial Assemblies;
7. Head and managing officer of National or Provincial Assembly services;
8. Head and managing officer of services of the President of the Republic;
9. Deputy and Assistant Minister, managing official of republic and/or provincial bodies and organisations and other heads of bodies and organisations in national and/or provincial bodies and organisations, appointed by the republic government and/or provincial executive council;
10. Secretary of municipal and city councils;
11. District Administrator;
12. President and judge of the Constitutional Court of Serbia (hereinafter: Constitutional Court), president and judge of courts of general jurisdiction and special courts, member of the High Judicial Council, public prosecutors and their deputies, administrator and judge of the court of misdemeanours;
13. Director and managing board member of enterprises founded by the Republic, province or local self-government;
14. Director and managing board member of public organisations founded by the Republic, province or local self-government, as follows:
- President and member of University Council, president of university and dean of faculty;
- President or member of managing board or other relevant managing body, director, deputy director, editor-in-chief, deputy editor -in-chief and editor of section of public media or publishing organisation;
- Director, president and member of the management board of the mandatory social insurance organisation;
15. Governor and Vice-Governor of the National Bank;
16. Director of a bank with majority state capital;
17. Director of tax administration, Deputy Director of tax administration, assistant to the director – chief inspector of the tax police, head of regional tax administration, head of regional tax administration police, director of branch office tax police;
18. Official and sworn officer of the Security Information Agency and/or other similar service;

19. Director and managing officer of penal institution;
20. Head of diplomatic mission in a foreign country and international organisation and/or consul;
21. Chief of staff of the army and/or head of counter intelligence service.

Additional institutions, agencies, parliamentary bodies assigned: Only one: The Commission for Investigation of Accountability for Human Rights Violations (hereinafter "the Commission").
The law states that the Commission has nine members. Three members are judges of the Supreme Court of Serbia, three members are prominent legal experts, one member is a deputy public prosecutor of the Republic of Serbia and two members are deputies of the National Assembly holding a degree in law, elected from different electoral lists. The President of the National Assembly proposes candidates for Commission members in such a way that a minimum of two candidates are nominated for each position from every group specified above. The National Assembly of the Republic of Serbia elects Commission members by secret ballot. A separate vote is taken for lists of candidates from the Supreme Court, prominent legal experts, deputy public prosecutors of the Republic of Serbia and deputies to the National Assembly holding a law degree (Articles 11, 22 and 23).

4. Implementation

Measures fully implemented: None.

Measures partially implemented: On 15 May 2003, the National Assembly appointed 8 out of 9 members of the Commission for Investigation of Accountability for Human Rights Violations. The ninth member has yet to be appointed, and the Commission has, as yet, not started to work.

Deficiencies of implementation: As yet, one cannot speak of any implementation of the law. There has been no real application of any measures.

Offices affected by implementation: None.

Persons affected by implementation: None.

4. Inclusion of NGOs and victims of the former regime in the preparation of the law

Inclusion of NGOs or victims of former regimes in the preparation of the law: None.

Reasons for deficiencies: The Law was adopted through an emergency procedure, and the National Assembly very rarely, if at all, involves NGOs in law preparation.

6. Public debates on the law

Broad public debates before passing the lustration law: None.

Initiatives for discussions: Some NGOs, several legal and other experts, and some media

representatives initiated discussions at round tables and seminars. There were some, albeit not many, reports in the media on such discussions.

7. Laws and procedures on public access to files of the secret services

Legal act on public access to the files of the secret services passed: A Decree on removing the confidence mark from files of the secret service was adopted in Serbia on 31 May 2002, but was declared unconstitutional in October 2003. A Decree under the same title was adopted in Montenegro in September 2002, which was not declared unconstitutional as had been the case in Serbia.

Activities of NGOs with respect to public access to the files: Two NGOs – the Center for Antiwar Action and the Center for Advanced Legal Studies – put forward a model of a Law on Opening Secret Police Files in June 2003. The text is available (in Serbian) at the web page of the Center for Antiwar Action (www.caa.org.yu). Another model had been set out by the Center for Antiwar Action and presented at the International Conference on Opening of Secret Police Files in February 2002.

Official reactions: The Ministry of Police refused to discuss the law model, so it has never been considered by the Government or the Parliament of the Republic of Serbia.

8. Proposals on other solutions

Proposals on other solutions: There were some, but rather few proposals.

In the former Federal Republic of Yugoslavia, then President Vojislav Kostunica established a Truth and Reconciliation Commission on March 2001, but some of the most distinguished designated members had serious objections with respect to the objectives, competencies, and powers of this commission and refused to participate. Two and a half years later, the commission had just vanished, without having undertaken any substantial activities and without having achieved any tangible results.

It was NGOs, in particular, that asked for criminal procedures for war crimes and crimes against humanity, and lustration in the cases of human rights abuses.

Dealing with "crimes against humanity": There has only been one court case (Ovcara dealt with in a Special Court for war crimes) which started in 2004.

Main reasons of deficiencies and failures: Particularly the fact that the subject of war crimes is still a "taboo".

9. General public debates on the past

Major public debates on the past: There were some, but only a few public debates on the past.

Major period referred to in these public debates: The period of the Milosevic regime and particularly the 1990s.

Main topics of these debates: The relations between Serbia on the one side and Croatia and Bosnia and Herzegovina on the other, the role of the Milosevic regime and particularly the role of the army and the police, in the wars in Croatia and in Bosnia and Herzegovina, the issue of cooperation with the Hague Tribunal.
Main initiators of these discussions: Several NGOs – the Center for Antiwar Action, the Humanitarian Law Fund, the Belgrade Center for Human Rights, the Center for Advanced Legal Studies, the Center for Civil-Military Relations, the Victimology Society of Serbia.

Segments of the society directly or indirectly involved in these debates: Mainly NGO members, experts, representatives of the media, students.

Public interest in these debates and their effect on the public opinion: Rather small.

Main reasons for the effects being so minor: In general, collective amnesia is preferred, many people did not want to believe the truth or even listen to the facts, especially not to believe or confess that Serbs were directly involved in war crimes.